



2. Affirms that Halifax's consent to entry of this Consent Order is voluntary, and that no promise, other than as specifically contained herein, or threat, has been made by the Commission or any member, officer, agent, or representative thereof, or by any other person, to induce it to consent to entry of this Consent Order;

3. Acknowledges service of the summons and Complaint;

4. Admits, for purposes of settlement of this action, the jurisdiction of this Court over it and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1; which authorizes the Commission to seek injunctive relief against any person whenever it shall appear to the Commission that such person has engaged, is engaged or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation or order thereunder;

5. Admits, for purposes of settlement of this action, the jurisdiction of the Commission over the conduct and transactions at issue in this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), and Section 2(c)(2)(C)(iii)(I)(aa) of the Act, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa) (2012);

6. Admits, for purposes of settlement of this action, that venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e);

7. Waives:

A. any and all claims that Halifax may possess under the Equal Access to Justice Act ("EAJA"), 5 U.S.C. § 504 (2012) and 28 U.S.C. § 2412 (2012), and/or the rules promulgated by the Commission in conformity therewith, relating to, or arising from, this action;

B. any and all claims that Halifax may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104-121, §§ 201-253, 110 Stat. 847, 857-868 (1996), as amended by Pub. L. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this action;

- C. any and all claims of Double Jeopardy based upon the institution of this proceeding or the entry in this proceeding of this Consent Order or any order imposing restitution, a civil monetary penalty, or any other relief; and
- D. any and all rights of appeal from this action;

8. Consents to the continued jurisdiction of this Court over it for the purpose of implementing and enforcing the terms and conditions of this Consent Order and for any other purpose relevant to this action, even if Halifax now or in the future resides outside the jurisdiction of this Court;

9. Agrees that it will not oppose enforcement of this Consent Order on the ground that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure and waives any objection based thereon;

10. Agrees that neither Halifax nor any of its agents or employees under its authority or control shall take any action or make any public statement denying, directly or indirectly, the allegations in the Complaint or this Consent Order, or creating or tending to create the impression that the Complaint or this Consent Order is without a factual basis; provided, however, that nothing in this provision shall affect Halifax's: (a) testimonial obligations; or (b) right to take legal positions in other proceedings to which the Commission is not a party. Halifax shall take all steps necessary to ensure that all of its agents and employees under its authority or control understand and comply with this agreement;

11. By consenting to the entry of this Consent Order, Halifax neither admits nor denies the allegations of the Complaint or this Consent Order, except as to jurisdiction and venue, which it admits for purposes of settlement of this action. Halifax does not consent to the use of the allegations in the Complaint or this Consent Order as the sole basis for any other proceeding brought by the CFTC other than a proceeding to enforce the terms of this Order.

Further, Halifax agrees and intends that the allegations of the Complaint shall be taken as true and correct and be given preclusive effect, without further proof, in the course of (a) any current or subsequent bankruptcy proceeding filed by, or on behalf of, or against Halifax; (b) any proceeding pursuant to Section 8a of the Act, to be codified at 7 U.S.C. §§ 12a, and/or Part 3 of the Commission's Regulations, 17 C.F.R. §§ 3.1 *et seq.*; and (c) any proceedings to enforce the terms of this Consent Order;

12. Agree(s) to provide immediate notice to this Court and the Commission by certified mail, in the manner required by paragraph 32 of Part VIII of this Consent Order, of any bankruptcy proceeding filed by, on behalf of, or against it, whether inside or outside the United States, and

13. Agrees that no provision of this Consent Order shall in any way limit or impair the ability of any other person or entity to seek any legal or equitable remedy against Halifax in any other proceeding.

### **III. SUMMARY**

#### **A. Statement of Facts**

14. The Court, being fully advised in the premises, finds that there is good cause for the entry of this Consent Order and no just reason for delay. The Court therefore directs the entry of a permanent injunction and equitable relief pursuant to Sections 2(c)(2) and 6c of the Act, 7 U.S.C. §§ 2(c)(2) and 13a-1 (2012), as set forth herein.

15. Plaintiff **Commodity Futures Trading Commission** is an independent federal regulatory agency charged by Congress with administering and enforcing the Act, as amended, to be codified at 7 U.S.C. §§ 1 *et seq.*, and the Regulations, 17 C.F.R. §§ 1.1 *et seq.* (2013).

16. Defendant **Halifax Investment Services, Ltd.** is a company located at Governor Phillip Tower, Level 40, 1 Farrer Place, Sydney NSW 2000 Australia that solicits and accepts

orders for off-exchange foreign currency (“forex”) transactions. Halifax has never been registered with the Commission in any capacity.

17. On October 18, 2010, the Commission adopted new regulations implementing certain provisions of the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008 (“CRA”)), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008), and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”), Pub. L. No. 111-203, Title VII §§ 701-774, 124 Stat. 1376 (enacted July 21, 2010). For the purpose of forex transactions, the new regulations, among other things, require retail foreign exchange dealers (“RFEDS”) to register with the Commission before soliciting or accepting orders from a non-Eligible Contract Participant (“ECP”).

18. From October 18, 2010 until at least February 5, 2013 (the “relevant period”), Halifax maintained a website at <http://www.halifax.com.au> on which U.S. residents could potentially apply to open leveraged forex trading accounts by submitting information online. Halifax’s online application inquired about a prospective customer’s savings and investments. However, the application did not inquire as to whether customers were ECPs, and in fact, could allow a customer who may not have met ECP requirements to complete and submit an account application. Halifax offered to act as the counterparty to every contract. According to its Product Disclosure Statement, Halifax “is the counterparty to every contract.”

**B. Jurisdiction and Venue**

19. This Court has jurisdiction over Halifax and the subject matter of this action pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a), which provides that whenever it shall appear to the Commission that any person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation,

or order thereunder, the Commission may bring an action in the proper district court of the United States against such person to enjoin such act or practice, or to enforce compliance with the Act, or any rule, regulation or order.

20. The Commission has jurisdiction over the forex solicitations at issue in this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, and Section 2(c)(2)(C) (iii)(I)(aa) of the Act, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa).

21. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), because Halifax transacts business in this District and certain transactions, acts, practices, and courses of business alleged in the Complaint occurred, are occurring, or are about to occur within this District.

### **C. Statutory Background**

22. With certain exclusions that are not applicable here, Section 2(c)(2)(C)(iii)(I)(aa) of the Act, 7 U.S.C. § 2(c)(2) (C)(iii)(I)(aa) (2012), among other things, prohibits persons or entities, unless registered with the Commission, from soliciting or accepting orders from any person that is not an ECP, as defined in Section 1a of the Act, 7 U.S.C. § 1a, in connection with agreements, contracts or transactions in forex on a leveraged or margined basis.

23. With certain exclusions that are not applicable here, Commission Regulation 5.3(a)(6)(i), 17 C.F.R. § 5.3(a)(6)(i) (2013) requires RFEDs to register with the Commission. Commission Regulation 5.1(h)(1), 17 C.F.R. § 5.1(h)(1) (2013) defines an RFED as “any person that is, or that offers to be, the counterparty to a retail forex transaction, . . .”

24. The CFTC has alleged that Halifax has engaged, is engaging, or is about to engage in acts and practices that violate Section 2(c)(2)(C) (iii)(I)(aa) of the Act, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa) (2012) and Commission Regulation 5.3(a)(6)(i), 17 C.F.R. § 5.3(a)(6)(i) and that unless restrained and enjoined by this Court, there is a reasonable likelihood that

Halifax will continue to engage in the acts and practices alleged in the Complaint or in similar acts and practices that violate the Act and Regulations. The CFTC also alleges that violations of this nature and the need to deter others from committing similar violations of the Act and Regulations warrant the imposition of ancillary equitable relief to carry out the objectives of the Act and Regulations.

**IV. PERMANENT INJUNCTION**

**THE PARTIES AGREE AND IT IS HEREBY ORDERED THAT:**

25. Halifax, all persons insofar as they are acting in the capacity of Halifax's officers, agents, servants, employees, and attorneys, and all persons insofar as they are acting in active concert or participation with Halifax who receive actual notice of this Consent Order by personal service or otherwise, are permanently restrained, enjoined, and prohibited from directly or indirectly:

- A. Engaging in any conduct in violation of Section 2(c)(2)(C)(iii)(I)(aa) of the Act, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa), including, but not limited to, soliciting or accepting orders from any U. S. resident or potential U.S. resident who is a non-ECP in connection with forex transactions without registering with the Commission; and
- B. Engaging in any conduct in violation of Commission Regulation 5.3(a)(6)(i), 17 C.F.R. § 5.3(a)(6)(i), including, but not limited to, offering to be the counterparty to U.S. residents' forex transactions without registering with the Commission.

**V. HALIFAX' S WEBSITE**

**IT IS FURTHER ORDERED THAT:**

26. Halifax and all persons insofar as they are acting in the capacity of Halifax's officers, agents, servants, employees, and attorneys shall within three days of the date of entry of this Consent Order publish on all websites owned or otherwise maintained by Halifax a prominently displayed notice stating, "Please be advised, the services and products offered by

Halifax Investment Services, Ltd are not being offered within the United States and are not offered to U.S. residents. Halifax Investment Services, Ltd is not registered with any U.S. regulator, including the National Futures Association (“NFA”) and the Commodity Futures Trading Commission (“CFTC”)” (“Website Notification”).

27. Halifax, all persons insofar as they are acting in the capacity of Halifax’s officers, agents, servants, employees, and attorneys, and all persons insofar as they are acting in active concert or participation with Halifax who receive actual notice of this Consent Order by personal service or otherwise, are permanently restrained, enjoined, and prohibited from directly or indirectly contradicting, in any manner whatsoever, the Website Notification.

28. The provisions contained in Part V of this Consent Order shall remain in effect unless and until Halifax properly registers with the Commission.

## **VI. TRADING PROHIBITION**

29. Halifax, all persons and entities insofar as they are acting in the capacity of agents, servants, employees, successors, assigns, or attorneys of Halifax, and all persons and entities insofar as they are acting in concert or participation with Halifax who receive actual notice of this order by personal service or otherwise, shall be permanently prohibited, enjoined and restrained from directly or indirectly:

- A. Trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, 7 U.S.C. § 1a) on behalf of any U.S. residents;
- B. Entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Commission Regulation 1.3(hh), 17 C.F.R. § 1.3(hh) (2013) (“commodity options”), security futures products, swaps (as that term is defined in Section 1a(47) of the Act, 7 U.S.C. § 1a(47), and as further defined by Regulation 1.3(xxx), 17 C.F.R. § 1.3(xxx)), and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) (“forex contracts”), for any U.S. residents;

- C. Controlling or directing the trading for or on behalf of any U.S. resident, whether by power of attorney or otherwise, in any account involving commodity futures, options on commodity futures, commodity options, security futures products, swaps, and/or forex contracts; and
- D. Soliciting, receiving, or accepting any funds from any U.S. residents for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, security futures products, swaps, and/or forex contracts.

30. The provisions contained in Part VI of this Consent Order shall remain in effect unless and until Halifax properly registers with the Commission.

#### **VII. CERTIFICATION OF COMPLIANCE**

##### **IT IS FURTHER ORDERED THAT:**

31. Within twenty days of the date of entry of this Consent Order, Halifax shall deliver to the Commission in the manner required by Part VIII of this Consent Order a written certification that it has complied with the requirements contained in Parts V and VI of this Consent Order. Such certification shall further include:

- A. A list of all websites on which the Website Notification has been published;
- B. A copy of all websites showing the Website Notification.

#### **VIII. NOTICES**

##### **IT IS FURTHER ORDERED THAT:**

32. All notices required to be given by this Consent Order shall be filed electronically with the Court and/or sent via certified mail, return receipt requested, as follows:

Notice to Plaintiff Commission:

Director of the Division of Enforcement  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street NW  
Washington, D.C. 20581

and

David Terrell  
Senior Trial Attorney  
Division of Enforcement  
Commodity Futures Trading Commission  
525 W. Monroe St.  
Suite 1100  
Chicago, IL 60661

Notice to Defendant Halifax:

Halifax Investment Services, Ltd.  
Governor Phillip Tower, Level 40  
1 Farrer Place  
Sydney NSW 2000 Australia

All such notices to the Commission shall reference the name and docket number of this action.

33. Change of Address/Phone: Until such time as Halifax satisfies its obligations as set forth in this Consent Order, Halifax shall provide written notice to the Commission by certified mail of any change to its telephone number and mailing address within ten (10) calendar days of the change.

**IX. CONTINUING JURISDICTION OF THIS COURT**

**IT IS FURTHER ORDERED THAT:**

34. This Court shall retain jurisdiction over this action to implement and carry out the terms of this Consent Order, to ensure compliance with this Consent Order, and for any other purpose relevant to this action.

**X. MISCELLANEOUS PROVISIONS**

**IT IS FURTHER ORDERED THAT:**

**A. Entire Agreement and Amendments**

35. This Consent Order incorporates all of the terms and conditions of the settlement between the Commission and Halifax. Nothing shall serve to amend or modify this Consent

Order in any respect whatsoever, unless it is: (1) reduced to writing; (2) signed by all parties hereto; and (3) approved by order of this Court.

**B. Invalidation**

36. If any provision of this Consent Order or the application of any provision to any person or circumstance is held to be invalid, the remainder of the Consent Order and the application of the provision to any other person or circumstance shall not be affected by such holding.

**C. Waiver**

37. The failure of any party hereto at any time to require performance of any provision hereof shall in no manner affect the right of such party at a later time to enforce the same or any other provision of this Consent Order. No waiver in one or more instances of the breach of any provision contained in this Consent Order shall be deemed to be or construed as a further or continuing waiver of such breach or waiver of the breach of any other provision of this Consent Order.

**D. Counterparts and Execution**

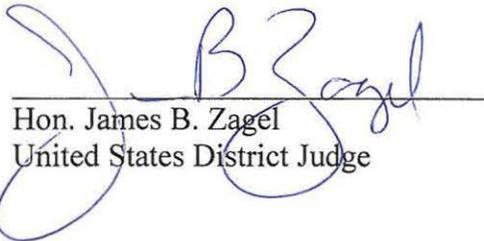
38. This Consent Order may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered (by facsimile, email, or otherwise) to the other party, it being understood that all parties need not sign the same counterpart. Any counterpart or other signature to this Consent Order that is delivered by facsimile or email shall be deemed for all purposes as constituting good and valid execution and delivered by such party of this Consent Order.

**E. Authorization**

39. Jeffrey John Worboys hereby warrants that he is the Managing Director of Halifax, that this Consent Order has been duly authorized by Halifax, and that he has been duly empowered to sign and submit this Consent Order on behalf of Halifax.

**IT IS SO ORDERED.**

Dated: 23 April, 2014

  
\_\_\_\_\_  
Hon. James B. Zagel  
United States District Judge

CONSENTED TO AND APPROVED BY:

Date: \_\_\_\_\_

\_\_\_\_\_  
Jeffrey J. Worboys  
Title: Managing Director  
Halifax Investment Services, Ltd.

Date: \_\_\_\_\_, 2014

\_\_\_\_\_  
David Terrell, Senior Trial Attorney  
U.S. Commodity Futures Trading Commission  
525 West Monroe Street, Suite 1100  
Chicago, IL 60661

Approved as to Form

\_\_\_\_\_  
Christian T. Kemnitz, Esq.  
Katten Muchin Rosenman LLP  
525 W. Monroe Street / Chicago, IL 60661-3693

E. Authorization

39. Jeffrey John Worboys hereby warrants that he is the Managing Director of Halifax, that this Consent Order has been duly authorized by Halifax, and that he has been duly empowered to sign and submit this Consent Order on behalf of Halifax.

IT IS SO ORDERED.

Dated: \_\_\_\_\_, 2014

\_\_\_\_\_  
Hon. James B. Zigel  
United States District Judge

CONSENTED TO AND APPROVED BY:

Date: 14<sup>th</sup> March 2014

\_\_\_\_\_  
Jeffrey J. Worboys  
Title: Managing Director  
Halifax Investment Services, Ltd.

Date: 4/16, 2014

\_\_\_\_\_  
David Terrell, Senior Trial Attorney  
U.S. Commodity Futures Trading Commission  
525 West Monroe Street, Suite 1100  
Chicago, IL 60661

Approved as to Form

\_\_\_\_\_  
Christian T. Kennitz, Esq.  
Katten Muchin Rosenman LLP  
525 W. Monroe Street / Chicago, IL 60661-3693